

Message Text

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PAGE 01 STATE 076602
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FM SECSTATE WASHDC
TO AMEMBASSY KINGSTON

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E.O. 11652: N/A

TAGS: EFIN

SUBJECT: INCOME TAX TREATY NEGOTIATIONS

1. SUMMARY: SUBSTANTIAL PROGRESS WAS MADE DURING MARCH 6-9, 1978 DISCUSSIONS IN KINGSTON. SEVERAL ISSUES REMAIN TO BE RESOLVED AT NEXT ROUND TENTATIVELY SCHEDULED FOR WASHINGTON, MAY 30-JUNE 2.

2. JAMAICA APPEARS EAGER TO CONCLUDE NEW TREATY BOTH TO PROVIDE TANGIBLE EVIDENCE OF GOJ DESIRE TO ATTRACT U.S. CAPITAL AND BECAUSE COLONIAL FLAVOR OF PRESENT TREATY IS SOURCE OF EMBARRASSMENT TO GOJ.

3. IN EFFORT TO MOVE DISCUSSION U.S. MADE A NUMBER OF CONCESSIONS GIVING JAMAICA EXPANDED RIGHTS, AS SOURCE COUNTRY, TO TAX INCOME OF U.S. PERSONS. THRESHOLDS FOR
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TAXING U.S. FIRMS DOING BUSINESS IN JAMAICA THROUGH BRANCHES (PERMANENT ESTABLISHMENTS) AND FOR U.S. INDIVIDUALS TEMPORARILY IN JAMAICA TO PERFORM SERVICES, SET BELOW LEVELS IN U.S. MODEL TREATY.

4. PRINCIPAL OPEN ISSUES RELATE TO:
A) TREATMENT OF CORPORATIONS INCORPORATED IN U.S. (I.E.,

RESIDENT IN U.S. UNDER U.S. LAW) AND MANAGED AND CONTROLLED

IN JAMAICA (I.E., RESIDENT IN JAMAICA UNDER JAMAICA LAW).
NEITHER SIDE WILLING TO ALLOW OTHER'S TEST TO TAKE
PRECEDENCE. JAMAICA WANTS COMPETENT AUTHORITIES TO DECIDE
ON CASE-BY-CASE BASIS, OR ALTERNATIVELY, TO LEAVE DUAL
RESIDENT CORPORATIONS OUT OF TREATY. FIRST ALTERNATIVE
UNACCEPTABLE TO U.S. SECOND ALTERNATIVE ALSO TROUBLESOME
BECAUSE SOME BAUXITE COMPANIES IN THAT SITUATION, AND IT
SEEMS INAPPROPRIATE TO LEAVE MAJOR SECTOR OF ECONOMY OUT OF
TREATY.

B) TREATMENT OF DIVIDENDS. U.S. WISHES TO GIVE FURTHER
CONSIDERATION TO WHETHER HIGH WITHHOLDING RATE ON
SUBSIDIARY DIVIDENDS, AS REQUESTED BY JAMAICA, CONSISTENT
WITH JAMAICAN SYSTEM OF CORPORATE/PERSONAL TAX INTEGRATION.
ALSO CONSIDERING RATE TO BE APPLIED TO PORTFOLIO DIVIDENDS.

C) U.S. FOREIGN TAX CREDIT FOR JAMAICAN TAXES PAID BY
BAUXITE COMPANIES. UNDER U.S. LAW THERE IS SERIOUS
QUESTION WHETHER JAMAICAN CORPORATE INCOME TAX PAID BY
BAUXITE COMPANIES IS CREDITABLE. (THERE IS NO QUESTION
THAT BAUXITE LEVY NOT CREDITABLE UNDER LAW OR TREATY, AND
NO REQUEST FOR CREDITABILITY BY GOJ). FOUR FEATURES LEAD
TO THIS RESULT: (1) EXPORT OF BAUXITE TAXABLE EVENT
WHETHER OR NOT INCOME ACTUALLY REALIZED; (2) FORMULARY
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APPROACH (RATHER THAN TRUE NET INCOME CALCULATION) TO
DETERMINATION OF TAX BASE; (3) FOR INCOME ON EXPORTED
BAUXITE PRODUCTION LEVY NOT ALLOWED AS DEDUCTION; THUS
BASE IS NOT NET INCOME FOR A SECOND REASON; AND (4) FOR
ALUMINA PRODUCTION INCOME, INCOME TAX CREDITABLE AGAINST
PRODUCTION LEVY; THUS LEVY, NOT INCOME TAX, DETERMINES
OVERALL GOVERNMENT TAKE.

D) U.S. CREDIT FOR WITHHOLDING TAXES ON DIVIDENDS OF
INCENTIVE COMPANIES. LEVEL OF JAMAICAN TAX DETERMINED BY
NATURE OF DOUBLE TAX RELIEF IN INVESTORS HOME COUNTRY.
RULES DISCRIMINATE AGAINST U.S. INVESTORS, AND THIS
DISCRIMINATORY APPLICATION BRINGS CREDITABILITY INTO
QUESTION.

E) SEVERAL MINOR ISSUES WHICH WILL BE EASILY RESOLVED WHEN
MAJOR ISSUES SETTLED.

5. FINAL PACKAGE MAY TAKE FORM OF U.S. ALLOWING CREDIT FOR
JAMAICAN TAXES ON PER COUNTRY BASIS (SO THAT EXCESS
JAMAICAN CREDITS CANNOT OFFSET U.S. TAX ON INCOME FROM
OTHER COUNTRIES AND VICE VERSA), IN RETURN FOR JAMAICAN

CONCESSIONS ON OTHER ISSUES. VANCE

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